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SUBJECT: NIGERIAN POWER SECTOR REFORM LAW IS SIGNED, BUT LONG WAY TO GO IN LIBERALIZING SECTOR

¶1. (U) Summary. After languishing in the National Assembly more than four years, the Electric Power Sector Reform Act (EPSRA) has been passed and signed by President Obasanjo. The Act: 1) Seeks to expedite privatization of the legendarily dysfunctional National Electric Power Authority (NEPA); 2) Establishes the Nigerian Electricity Regulation Commission (NERC), a regulatory body to license independent power plants (IPPs), regulate tariffs, and protect consumers; and 3) Initiates a rural electrification strategy. Industry watchers and economic analysts applaud the bill's passage but raise serious doubts about implementation. The average Nigerian who has suffered record low power supplies since winter 2004 is unimpressed; their XX and cry remain "show me the light". End Summary.

Power Sector Law Finally Signed; NEPA Privatization to Start 2006 - Really, We Mean It This Time
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¶2. (U) The Electric Power Sector Reform Act, (EPSRA) liberalizing Nigeria's power sector was signed into law March 11. The law seeks to speed privatization of the state-owned power agency, NEPA, often derisively referred to as "Never Expect Power Always." The EPSRA stipulates that an Initial Holding Company (IHC), then successor companies will generate, transmit and distribute electricity. The IHC, which will assume NEPA's assets and liabilities, and the successor companies, must be incorporated within six and eight months of the signing of the law, respectively. The Bureau of Privatization Enterprises (BPE) is currently processing the IHC's incorporation. The success of this effort will be significant in the run-up to NEPA's eventual full privatization.

¶3. (U) The BPE announced that NEPA privatization which has been scheduled since 2002, will now finally commence, in graduated stages, beginning first quarter ¶2006. In effect, the Act seeks to "unbundled" the moribund NEPA in hopes that the parts, once separated, will be more valuable than the whole. In the first stage, the GON plans to sell four generation companies (Gencos), four distribution companies (Discos), and its sole transmission company (Transysco). In stage two, it hopes to sell an additional four Discos and two Gencos. The remaining three Discos will be sold in stage three. The BPE did not specify when the entire process would be completed.

¶4. (U) Waclaw Lukowicz, General Manager, Siemens Nigeria Power Division, has been closely involved in efforts to upgrade NEPA in preparation for privatization. Lukowicz has spoken well of the overall power reform plan. However, he privately acknowledged to Econoff that only "some" of the projects detailed in the NEPA upgrade plan will likely happen.

¶5. (U) In the meantime, the GON is under enormous public pressure to increase electricity supply - NOW. It has become a point of political embarrassment for Nigeria's first citizen. Early in his administration President Obasanjo pledged to lift NEPA generating capacity to over 6000 MW. Instead of getting brighter, the lights have dimmed. Nigeria's generating capacity is below 3000MW, or 100 percent less than needed to have a functioning national power supply. Most companies and financially-able private consumers rely on external generators to light their homes and operate their businesses. In the face of the public clamor, the GON announced it would increase generation to 10,000MW by 2007. As part of this new push, the President is pressing all major oil companies to build Independent Power Plants (IPPS) (reftel). However, oil executives are reluctant to pursue the President's strategy given the country's subsidized, non-profitable electricity tariff regime and that their business is

not power generation.

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Regulatory Body to License IPPs, Regulate Tariffs, and Protect Consumers
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¶6. (U) The EPSRA establishes a regulatory body, the National Electricity Regulation Commission (NERC), with responsibility for: licensing and regulating Independent Power Plants (IPPs), regulating tariffs, and consumer protection, which includes administering a fund to subsidize indigent power consumers. Ostensibly, the NERC will be independent and self-funding. The President appoints the chair and vice chair for a maximum of two terms, of five years each. The BPE is currently searching for candidates for the NERC's top positions.

¶7. (U) How the tariff regime will be developed for IPPs and the IHC has not yet been disclosed and indeed we expect that it is yet to be decided. On the issue of licenses, the EPSRA stipulates the NERC will process all IPP applications upon fee submission. It will approve or reject applications within six months with licenses valid no more than ten years. In consultation with licensees, the NERC will develop customer service standards and procedures for handling customer complaints and defaults. The NERC will also establish and manage the money and assets of a customer assistance fund, to subsidize underprivileged power consumers.

¶8. (U) An important thrust of the EPSRA is encouraging private investment and participation. Depending on their type of license, independent power producers will be allowed to sell electrical power to one or more trading licensees. Following the declaration of a substantially privatized market, they may also sell directly to distribution companies and eligible customers.

(Comment: According to the Act, NERC will wield much power. A major challenge will be inspiring confidence in its decision-making processes. The regulator's fairness and transparency will help dictate the success of the overall power reform effort. End comment.)

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Rural Electrification: Lights for the Frontier?
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¶9. (U) Finally, the EPSRA mandates the establishment of a "rural electrification agency" and formulation of a concomitant strategy. This agency will manage a fund designed to increase regional access to electrification. The fund will be directed specifically towards expanding the national grid and exploring options of off-grid electrification -- solar, wind, etc.

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Private Business Sector Skeptical; Ordinary Consumers Willing to Pay for Reliable Power
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¶10. (U) Private business sector contacts are skeptical about meaningful reform within the power sector. While they applaud the EPSRA, they note two major obstacles likely to hamper the law's implementation. First, vested interests oppose reforming the sector. The GON points to its successful deregulation of the telecom sector as proof its capable of taking on such an endeavor. . However, skeptics counter that interests in the power sector are more entrenched. Substantial contracts are periodically given to "rehabilitate" NEPAs aging and decrepit capital assets. The importation, sale, and maintenance of generators is big business in Nigeria. In a recent speech, the Minister of Power and Steel claimed Nigeria was the world's second largest importer of generators.

¶11. (U) Second, Nigeria is still revising its gas fiscal policy. Gas is needed to fuel thermal power plants and one of NEPA's primary excuses for constant outages has been disruption in the gas supply. Currently the GON provides NEPA an estimated annual gas subsidy of USD 60 million. Private sector contacts argue if the GON is serious about attracting foreign and independent investors to the sector, it must liberalize gas pricing so that realistic tariffs can be set and investment plans formulated. They argue if the GON wants to continue to provide incentives for power generation in Nigeria after liberalization, it should do so through other means, such as by providing

write-offs for equipment importation, for example.

¶12. (U) Diesel baron (and Obasanjo funder), Femi Otedola doubts President Obasanjo will complete the power sector reform before the 2007 election. However, he believes a new administration will not be able to "un-do" measures put in place by Obasanjo. While a new president may not be able to reverse what OBJ has done, he may not continue it either. A parallel example is the telecom sector. The sector has been substantially liberalized and there are four GSM operators and over ten fixed wireless telephone providers in the market. Yet, state-owned NITEL's (Nigerian Telecommunication Limited) scheduled privatization is bogged down. Otedola concluded that in this environment, potential power investors will be cautious.

¶13. (U) Vmobile's Chief Regulator, Jean Pierre Snijders lauded EPSRA and believes its successful implementation will go a long way in reducing the telecom company's costs. Presently, Vmobile powers its over four hundred base stations with two generators each, raising overhead by over 30 percent.

¶14. (U) Jide Mike of the Manufacturers Association of Nigeria (MAN) attributes the non-competitiveness of the industrial sector to the power sector. MAN puts its members' annual losses due to power cuts at about USD1 billion. Mike said manufacturers generate between 72 - 100 percent of their own electricity requirements. He extolled the law, saying the possibility of buying power directly from independent producers would expand industrial production, as capital spent on power generation is freed up.

¶15. (U) On the consumption side, estate manager, Yemi Fadoju, told us residents of his estate would be willing to sign up to an IPP, as a unit. He said each of the over fifty housing units in the middle-income earners' estate rely mostly on generators. Fadoju said a typical household spends USD 90 monthly fuelling a generator and in addition pay NEPA about USD 38 a month. Fadoju asserted residents would gladly pay for constant electricity monthly.

Comment

¶16. (U) Power, or more accurately the lack thereof, ranks among the top concerns of all Nigerians. While passage of the power reform bill is an important step forward, the GON needs to do a lot more, and a lot sooner to address this issue which is severely retarding Nigeria's economic development. Moreover, this is one reform Nigeria cannot afford to get wrong. Yet, for reform to have its intended impact, the GON must also rationalize its gas fiscal policy. This means it must enact two major liberalizations, electricity and gas pricing, simultaneously. This will be no small feat. Successful power sector reform must also ensure the new power ombudsman agency, the Nigeria Electric Regulatory Commission (NERC), is staffed with competent professionals. Finally, the GON must exercise the political will necessary to displace the vested interests who benefit from the system of "never expect power always". In all, there is a long concatenation of very complex issues that must be correctly resolved for power sector reform to work. For all this to happen will take a lot of skill, a lot of luck, and a fair amount of time.

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